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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,404	04/26/2001	Chester Struble	P-8032	9095

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MEDTRONIC, INC.
710 MEDTRONIC PARKWAY NE
MS-LC340
MINNEAPOLIS, MN 55432-5604

EXAMINER

OROPEZA, FRANCES P

ART UNIT PAPER NUMBER

3762

DATE MAILED: 09/09/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,404

Applicant(s)

STRUBLE, CHESTER

Examiner

Frances P. Oropeza

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/12/03 (Petition and Election).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 1-59, 65-83 and 90-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-64 and 84-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Petition for Revival of Abandoned Application

1. The Applicant's petition for revival of the unintentionally abandoned application was granted on 6/18/03.

Election/Restrictions

2. Claims 1-59, 65-83 and 90-104 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 60-64 and 84-88 are rejected under 35 U.S.C. 102(e) as being anticipated by Wentkowski et al. (US 6430439). Wentkowski et al. disclose a method of collecting biventricular cardiac sense and pace data to determine conduction sequences (abstract; col. 1 @ 5-7, 26-39 and 46-51; col. 1 @ 57 – col. 2 @ 6; col. 2 @ 27-34, 54-56 and 63-66; col. 3 @ 15-17 and 21-31; col. 8 @ 10-33; col. 9 @ 62-65).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wentkowski et al. (US 6430439) in view of Mower (US 6146586). As discussed in paragraph 3 of this action, Wentkowski et al. disclose the claimed invention except for a means for delivering antitachycardia pacing.

Mower teaches pacing therapy using overdrive pacing/ antitachycardic pacing for the purpose of providing a treatment to overcome the pathological cardiac rhythms/ conduction delays characterized by variable/ intermittent rate and/or ectopic foci often associated with congestive heart failure. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used antitachycardic pacing in the Wentkowski et al. system in order to provide a treatment that prevents potentially life threatening ventricular tachycardia (col. 1 @ 16-38; col. 4 @ 13-59).

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the


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organization where this application or proceeding is assigned is (703) 306-4520 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

8/25/03



ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700